Cass, Lewis, 1782-1866.

Speech of ... Senate ...
June 13, 1854.
Washington D.C. 1854.

SPEECH

OF

HON. LEWIS CASS, OF MICHIGAN,

ON THE

VETO MESSAGE OF THE PRESIDENT,

ON

THE INDIGENT INSANE BILL,

DELIVERED IN THE SENATE OF THE UNITED STATES, JUNE 13, 1854.

Mr. CASS said:

Mr. PRESIDENT: I shall vote against this bill, and, in doing so, shall sustain the President's veto. If a constitutional majority of the Senate adopt the same course, that act would establish that, in their opinion, grants of public lands under such circumstances cannot be made to the States of the Union. That would be the extent of our action. I have examined the message with care. It, of course, enters—and I think properly—into the whole question, and furnishes a very able view of it. In its general reasoning and illustrations I fully concur, agreeably to my understanding of them. What that understanding is, Mr. President, I shall explain more fully in the course of my remarks. If the President's views go beyond this, while I concur with him in his conclusion, I shall, of course, not agree with him in all the process by which he reaches it.

This subject has thus far been argued by the opponents of the veto, as if the constitutional provision in relation to the property of the United States had reference solely to the public lands or domain, without looking to the consequences, which would necessarily result from the application of the same construction to the full power. This view was clearly presented by the Senator from Virginia, [Mr. HUNTER,] in his able remarks on the question before us. Certainly, whatever right of disposition we possess, we possess it equally over all the property of the United States, however acquired, or for whatever purposes held.

The constitutional authority is, that *Congress shall have power to dispose of and regulate the territory or other property of the United States.* The public domain, the forts, arsenals, armories, dock-yards, mints, custom-houses, ships, materials of war, this building which we occupy, the Presidential mansion, all come equally within this clause; and whatever power we have over one, whether to alienate it for an unconstitutional consideration, or for no consideration at all, we have the same power over the whole.

What is that power?

A good deal has been said here about ownership and trusteeship, and many nice questions have been learnedly discussed with relation to them. I put all this out of view, sir, as Congress, whether acting as attorney, or owner, or trustee, has just what power the Constitution gives, and no more, to be exercised honestly, in conformity with the deeds of cession, where there are any. Subtle questions about the capacity in which we act, are out of place and unprofitable, because the fair words of the grant, fairly construed, should guide us in the execution of the duty. I consider Congress is just the same kind of attorney and trustee in this case (I will not dispute about words) as in all others—an attorney or trustee to carry into effect the provisions of the Constitution.

The power given is to dispose of or alienate the public property. It is general, and doubtless admits of the direct application of that property to constitutional purposes, without selling it and converting it into money, and thus enlarges the legislative authority. The term was probably employed with that very view, and embraces grants for military services and other objects. It is evidently copied from the Virginia deed of cession.

But then comes the question, can this be done without any consideration, or for an unconstitutional one? Can the property be given away for any and every purpose? I do not think it worth while to resort to the definitions of the word "dispose" to be found in the dictionaries. It is certainly a word of large import, but every rational rule of construction requires us, in its application, to look, not merely to a naked definition, but to the nature of the subject, and to the purposes for which it is employed. An attorney in common life, with power to dispose of the property of his principal, would require some more justification for giving it away, than would be found merely in a large definition of the word. The power to dispose of does not preclude an examination of the proper consideration. The Senator from North Carolina, in his very able and argumentative vindi-

cation of his views upon this subject, contends that the power is not only universal and exclusive in its application, but unlimited as to the objects. And this is also the view of the Senator from Mississippi, [Mr. BROWN,] to whom I listened with great interest, and who sometimes almost converted me to his opinions, in spite of my previous convictions. His effort was a masterly one.

The Senator from Virginia, [Mr. HUNTER,] gives the largest signification to the word property, and makes it include, not only the land and buildings and such movable effects as may be necessary in the operations of the Government, but also extends it to the proceeds of the taxes, and of other objects paid into the Treasury; and to show that the term *dispose of*, is broader in its meaning than many contend, he derives from it the right of appropriation, and then argues, that if this power of disposition is unlimited, it leaves the whole fiscal means of the country at the disposal of Congress, and in fact destroys the safeguards of the Constitution.

This view is correct, so far as respects the public land and other property, in the received signification of the word; but so far as respects the means in the Treasury, I cannot agree with the Senator. This deduction is another proof of the error of the process, by which the meaning of terms employed in the Constitution, is sought in received definitions alone, without regard to the nature of the subject, or to the purposes to be attsined. These necessarily control the extent of the grant. I do not think, that the power to dispose of the territory and other property of the United States extends to the money paid into the proper department of the Government. Neither the phraseology nor the context justifies such a construction, nor is it at all necessary, as the Senator supposes, to enable Congress to mske appropriations of the public revenue. That power is given by another clause of the Constitution, not by this. By the clause, which provides that "no money shall be drawn from the Treasury but in consequence of appropriations made by law," not by "rules and regulations" as is provided in the case of the territory and other property of the United States.

It is not a little curious, and marks the diversity, the discordance of views rather, which accompany this subject, that two opposite conclusions are drawn from this very power of disposition and regulation, by the Senator from Virginia, [Mr. HUNTER,] and by the Senator from Mississippi, [Mr. BROWN.] While the former deduces from it the necessity of making every payment, the proceeds of property as well as of taxes, into the Treasury, thence to be drawn out as in other cases, the latter doubts "whether it was ever in contemplation that the lands should be sold," &c., "as no provision wss made for raising money from the sale of land, and no purpose designated, to which the money, when raised from such sales, should be applied," &c.

The power of disposition, to return to the views presented by the Senator from North Carolina, [Mr. BADGER,] is universal, as it operates upon all the property of the United States; and it is exclusive, as no authority can interfere with Congress in its execution. But the question before us relates to the consideration, or purposes, for which such property may be alienated. Are these unlimited, depending solely upon the will of the Federal Legislature? As I have said, the object of inquiry includes the whole property of the General Government, and thus we are brought to the question, can Congress dispose of all this property at pleasure, give it away, or apply the proceeds to unconstitutional purposes, incompatible with the nature of our political system? And this, too, though it may have cost millions paid out of the Treasury.

One would suppose, on general considerations, that this was a subject beyond all doubt, and that to repeat such a proposition would be to refute it. That all the grants of power must be construed with reference to the spirit and purposes of the Constitution.

Any other principle of interpretation would make a total revolution in our institutions, and would extend the power and influence of the General Government to almost all the objects of life, and to every corner of the Union.

"It appears to me," said General Jackson, in his message of December 2, 1832, speaking of the consequences of distribution to the States; and whether that distribution is money or land, the effects and the principle are the same: "It appears to me, that there cannot be a more direct road to consolidation." "It is too obvious that such a course would subvert our well-bslanced system of government, and ultimately deprive us of the blessings now derived from our happy Union."

Every one who reflects upon the practical consequences of such a power, at its extension to every State, county, town, and township of the Republic, and upon the powerful motives it would call into action, seeking the favor of the General Government, and binding persons to its interest, must approve at once the sagacity and the firmness of General Jackson. Were there no other objections to such a measure, the consequences themselves would constitute insuperable ones.

The Senator from North Carolina, after planting himself upon the extent of the words, challenges all attempts to dislodge him from his position.

Let us look at this. He says:

"Where, then, are there any limitations upon this power over the lands? If the United States of America, as a political sovereignty, own property, they undoubtedly have power to sell or otherwise dispose of it, to sell it for whatsoever they please, and to give it to whomsoever they please. Well, whatever their power was, they have devolved it upon Congress in express, unmistakable terms."

Here, sir, is an obvious *non sequitur*. An error which pervades the entire argument. The whole power of the people of the United States over the public property has not devolved upon Congress; only that power over it has been granted, which is compatible with the principles I have laid down, that is, with the general purposes of the Constitution. But the people, in their sovereign capacity, have unlimited authority. The Senator, if I understand him, concedes that unlimited powers cannot be applied by Congress to objects expressly prohibited by the Constitution. But the people themselves can so apply them. All barriers fall before them. I am speaking, of course, of the exercise of their power in the mode pointed out by the Constitution. They could apply their property, all their means indeed, to any purposes whatever. Not so their agents, who can only exercise the powers delegated to them, and as they are delegated. The principal and the subordinate have, in this case, very different authority.

I have not been able, precisely, to ascertain the views of the Senator from North Carolina, as to the unlimited exercise of a power, without express terms of limitation. Though he at first lays down no restriction, yet in the progress of his argument, he quotes the remarks of Mr. Calhoun upon the subject, and seems to regard them with favor.

Mr. Calhoun, in some speculations upon constitutional powers, remarks:

"There is a very striking difference between the manner in which the treaty-making and the law-making power, in its strict sense, are delegated, which deserves notice. The former is vested in the President and Senate by a few general words, without enumerating or specifying particularly the power delegated. The Constitution simply provides that he shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; while the legislative powers vested in Congress, are, one by one, carefully enumerated and specified. The reason is to be found in the fact, that the treaty-making power is vested, *exclusively*, in the Government of the United States, and therefore nothing more was necessary in delegating it, than to specify, as is done, the portion or department of the Government in which it is vested. It was then not only unnecessary, but it would have been absurd, to enumerate specially the powers embraced in the grant. Very different is the case in regard to legislative powers. They are divided between the Federal Government and the State governments, which made it absolutely necessary, in order to draw the line between the delegated and reserved powers, that the one or the other should be carefully enumerated and specified; and, as the former was intended to be but supplemental to the latter, and to embrace the comparatively few powers which could not be either exercised at all, or if at all, could not be so well and safely exercised by the separate governments of the several States, it was proper that the former, and not the latter, should be enumerated and specified. But, although the treaty making power is exclusively vested, and without enumeration or specification, in the Government of the United States, it is nevertheless subject to several important limitations."

The Senator from North Carolina in his commentary upon these views observes:

"The first limitation, he then states, is 'to questions *interalios*,' and then, in the second place, it is to be limited; but I will give his own words:

"'It is, in the next place, limited by all the provisions of the Constitution which inhibit certain acts from being done by the Government, or any of its Departments—of which description there are many. It is also limited by such provisions of the Constitution as direct certain acts to be done in a particular way, and which prohibit the contrary; of which a striking example is to be found in that which declares that 'no money shall be drawn from the Treasury, but in consequence of appropriations to be made by law.'

"Then he states that, by a necessary limitation, implied, though not expressed, the treaty-making power of the country cannot be used to destroy or alter the Constitution or Government under which it is exercised."

For myself, sir, I do not see either the justice or value of the original remarks, nor the force of their present application.

Legislative powers are those, which are made such by the Constitution. All powers may be vested in a Legislature; and, theoretically, they are so in England, for the Parliament may assume any function it pleases. Had the treaty-making power in this country been intrusted to Congress, the terms conveying it would, no doubt, have been just what they now are. And so with respect to the war-making power, had it been vested in the President and Senate; and to the pardoning power, had it been conferred upon the Legislature. These changes in the depositories of the power might have been made without any change in the terms defining it. And it is a singular commentary upon this proposition, that in the Articles of Confederation, where the treaty-making power was conferred upon Congress, the grant is just as general, and, in fact, is substantially the same, as that in the Constitution. In the former, the Congress was empowered to "enter into treaties;" and in the latter the President and Senate are empowered to "make treaties." The only limitation upon the power of the old Congress was to prevent the formation of certain treaties of commerce interfering with the rights of the States, and which rights, relating to duties and prohibitions, being abandoned by the Constitution, the limitation became inapplicable. But I repeat, the grant of power is equally general in both cases. In the eighth section of the first article of the Constitution, defining the legislative powers, there are eighteen clauses containing the various grants. I suppose no one will maintain that more than three of these are exclusive, while there are plausible reasons for maintaining but one to be so. Exclusion results, either from the nature of the subject, or from express prohibitions. The power, which is certainly not exclusive, is the power of taxation; and that is granted in the most general terms. I see no difference in the phraseology of the several clauses, from which a conclusion can be fairly drawn to justify any peculiar speculations. The terms employed are those just suited to the subject. The whole legislative power is not granted, nor the whole executive power, nor the whole judicial power; for grants in such general and indefinite terms would not only lead to endless disputes, but would establish a despotism. But the whole treaty-making power is granted, and in plain words; and the whole war-making power is granted and in words equally plain; and so of the commerce-regulating power, and others. Where all is given, specification becomes unnecessary. It would have been a mere waste of words to define the branches of the treaty-making power—to enumerate treaties of peace, of commerce, of alliance, of acquisition, &c. And the same view applies to the commerce-regulating power, to the naturalization power, to the post-department power, to the war-making power, to the army-raising power, to the navy-providing power, and so on through all the grants of authority made to the Government. No specification of their various divisions, where there are any, was called for, because full legislation, in all these cases, was conveyed. Powers may be unlimited, which are not exclusive. The power of taxation is without express limitation; but no one will contend, that it is an exclusive power. The exclusion of the States from participation in the exercise of powers vested in the General Government, depends either upon express prohibitions or upon the nature of the grant, rendering double legislation over the subject inconsistent with the purposes sought to be attained.

Mr. Calhoun concedes there are limitations to the treaty-making power, though it is exclusive, and without enumeration or specification. And these limitations he justly finds in the nature and purposes of the Constitution, though if his views are to be gathered solely from the brief extract furnished by the Senator from North Carolina, I think his process of limitation is entirely too restricted for the Constitution. Certainly the treaty-making power cannot be extended to all subjects whatever, which are not destructive of the Constitution, unless by that expression is meant all those not justified by it, and which are not prohibited by it, nor to those required to be done in a special

manner. If this is the boundary established by Mr. Calhoun, it is easy to see that it would leave a vast variety of the concerns of the General Government, as well as of the State governments, to pass under the control of the President and two thirds of the Senate, with the aid of a foreign potentate, and thus the most important principles of our institutions might be broken down, and the structure of the political system entirely destroyed. I think there must be some misapprehension, as to the extent of the views of Mr. Calhoun, as attributed to him by the Senator from North Carolina, for they are certainly irreconcilable with his remarks in the Senate in 1840, when the distribution scheme was pushed to its final consummation. Mr. Calhoun opposed it, and after asking whether this "vast fund," as he called it, could be appropriated at the pleasure of Congress, and among other purposes, to aid the various Abolition societies through the country, and receiving no reply, observed:

"I did not anticipate an answer. He [Mr. Webster] cannot say yes; and to say, no would be to surrender the whole ground. Nor can he say, as he did, that it is prohibited by the Constitution. I will relieve the Senator. I answer for him: Congress has no such right, and cannot exercise it without violation of the Constitution. But why not? The answer is simple, but decisive—because Congress has not the right to exercise any power except what is expressly granted by the Constitution, or may be necessary to execute the granted powers; and that in question is neither granted, nor necessary to execute a granted power."

This is the true ground, and just what I contend for.

The Senator from North Carolina, in appropriating the speculations of Mr. Calhoun, with his construction of them, to the purposes of his argument, runs a parallel between the treaty-making power and the property-disposing power, saying both are exclusive, both express, and that both include the whole subject of the grant. Neither could be exercised by the States separately, or at least without manifest inconsistency, and is therefore vested in Congress, without any constitutional limitations, except those specified by Mr. Calhoun.

As I have not been able to refer to the remarks of Mr. Calhoun, in his own works, I can only gather his views from the quotations given by the Senator from North Carolina.

"The power," says the Senator, "being thus distinct, exclusive, express, unqualified, granted in the largest terms to dispose of without limitation, to give, or sell, or use the property which is the subject of the grant, just as an owner in fee-simple would his own estate. Where is the limitation upon it?" It will be observed, that the words *give, sell, or use the property, just as an owner in fee-simple might do*, upon which, indeed, turns the real point of difference, are but assumed, I suppose, argumentatively, and, I think, altogether without just reason.

If I understand the object of the Senator in this reference to the views of Mr. Calhoun, it is to show, that there is an exact parallel between the treaty-making power and the property-disposing power in their general features, which indeed he describes, and that the latter, being subject to neither of the limitations admitted with regard to the former, is purely discretionary, and may be exercised just as Congress sees fit.

Mr. BADGER. My friend will allow me to say that I considered the power of disposition as subject to no other restrictions, than such as were pointed out in, or necessarily implied in, the Constitution; and I sustained it by reference to the treaty-making power.

Mr. CASS. I shall advert to that topic presently; but in the mean time, I will remark, that if by *restrictions necessarily implied in the Constitution*, the honorable Senator means that appropriations of land or money can only be made for purposes warranted by the Constitution, his views of the powers of Congress are just what mine are, though it seems to me, that by this doctrine, he abandons the very question at issue between us. The honorable Senator considers, that as this power to dispose of the public lands, was never in the States, it could not, therefore, be reserved. It could not be in the States, because there was no such thing as property of the United States before their existence. And the same thing is true with regard to the power to borrow money on the credit of the United States. Its exercise could not precede its existence. But, sir, I do not consider, that this circumstance has any bearing upon the subject. Powers were reserved or prohibited, out of abundant caution—jealousy, perhaps—not out of necessity. The Government, being not only one of limited, but of granted powers, can assume none, which are not enumerated in the Constitution, or not necessary to the exercise of such as are. A power not granted is as much out of the sphere of congressional action, as if it were prohibited. I speak of the prohibitions upon the General Government. And such were the views of the authors of the Federalist; for in that almost authoritative exposition of the principles of the Constitution, it is emphatically asked, "Why declare that a thing shall not be done, which there is no authority to do?"

But again, sir, I do not put that narrow construction upon the word *reserved*, which is put by the Senator. It is another instance in the language of the Constitution, where the meaning of the term may be controlled or extended by the context. The Senator confines *reserved* to powers previously existing in the States, while the whole theory of the Government negatives the possession of all power not specifically granted. The provision in the amended article of the Constitution upon this subject, is as follows:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Now, sir, what powers are reserved? All the powers not granted. Whatever their origin, whether preceding or following the establishment of the Government, they are equally withheld. And that is obviously the meaning of the word, and is one sanctioned by general assent.

Now, sir, either general powers are limited by the nature and purposes of the Constitution, or they may be converted to its destruction by direct attacks upon it, or by indirect ones, resulting from the establishment of principles, inconsistent with its true operation and restraints.

The Senator from North Carolina gives his view of this subject. He says:

"Beyond all doubt, Mr. President, Congress is bound, in the exercise of every power, and the President in making treaties is bound in the exercise of that power, constantly to bear in mind the purpose for which this Constitution was

formed, as set out in the preamble; and all these powers, however absolute in the form of the grant, and however absolute in point of fact they may be—I mean as to the naked power—are always to be used, and can only be rightfully used, for the purpose of accomplishing the great ends, or some of them, of establishing justice, insuring domestic tranquillity, providing for the common defense, promoting the general welfare, and securing the blessings of liberty which the Constitution, in its preamble, declares to have been the motive for its formation.

Mr. Adams in an inquiry into the power of Congress to prohibit slavery in the Territories thus reasoned upon a provision of the Constitution:

"Needful to what end? Needful to the Constitution of the United States, to any of the ends for which that compact was formed? These ends are declared in the preamble to be to establish justice, for example. What can be more needful to the establishment of justice than the interdiction of slavery where it does not exist?"

The step, in periods of fanaticism, from the establishment of justice, by interdicting the extension of slavery without any grant of power for that purpose, to its establishment, by the abolition of it, is not a very difficult one. This doctrine once assumed, and the safety of the South will be in themselves, and not in the Constitution. This mode of deriving the power of Congress from the motives of the people in the formation of the General Government, as avowed in the preamble, or elsewhere in the Constitution, has been so often discussed and its fatal consequences exposed, that it would be a mere waste of time again to examine it. It is obvious, on the slightest reflection, that if the promotion of the general welfare or other object, declared to be among the motives for the establishment of the new government, is to be considered an integral grant of power, the limitations and guards of the Constitution are perfectly useless, and every power is lawful, which Congress chooses to assume. The establishment of justice, the attainment of domestic tranquillity, the providing for the common defense, the promotion of the general welfare, and the security of the blessings of liberty, constituted the motives for the institution of the Government, but contain no grants of power. They are objects to be kept in view, but are to be attained by the exercise of powers, specifically enumerated, and in no other way. I suppose there is no government under heaven, which does not profess to be guided by some of these objects, and if they are also to guide Congress, the Constitution is not worth the paper on which it is written.

If then the treaty-making power, which is without express limitation, is controlled by other provisions of the Constitution, why is not the property-disposing power to be exercised, subject to the same principle?

And so with respect to the power of raising a revenue. Here is the clause:

"Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare; but all duties, imposts, and excises, shall be uniform throughout the United States."

Now, here is an unlimited power of raising taxes, and still more an unlimited right of applying them, so far as regards the terms of the grant. For the common defense and general welfare, even if considered words of restriction, would practically amount to nothing, as they would leave the utmost latitude of discretion to Congress. But they are not. They merely express the general motives for taxation, and above all, contain no substantial grant of power. For if they did, as is well observed by the President, "all the rest of the Constitution, consisting of carefully enumerated, and cautiously guarded grants of specific powers, would be useless, if not delusive."

The enumeration of the various kinds of public contributions in this clause, was not intended to limit, but to enlarge the power, to extend it to all the known means of raising a revenue for the support of the Government, and became necessary, because the word tax has received a signification, which, if strictly construed, might exclude important sources of supply, such as excise and others.

The limitation imposed, arising out of the nature of the Constitution, is, that objects connected with the common defense and general welfare, are to be obtained by means of the specific and express grants of power. Without this construction, there would be no limitation to the application of the public money by Congress, but the discretion of that body would be supreme and arbitrary. I have already referred to the clause of the Constitution, which recognizes in Congress the power of making appropriations from the Treasury. This power is as general as words can convey, with no limitation whatever. Either, therefore, this pervading principle of construing grants of power by the purposes and provisions of the Constitution, must limit this authority, or it is unlimited, and may be used or abused at the pleasure of the National Legislature, and to the establishment of arbitrary authority upon the ruins of the Constitution. Apply this same rule to the power to dispose of the public property, by requiring that it shall be exercised in conformity with the grants of the Constitution, and we carry out the true principle, and furnish safeguards against legislative abuse.

The same view applies to the "power to borrow money on the credit of the United States." These words contain the whole grant, and are as unlimited as our language permits. No one doubts but that this money may be, must be indeed, disposed of by Congress, and I presume no one contends, that it can be disposed of for any other purposes than those, specially enumerated in the express grants of power. And where do you find this limitation, but in the nature of the Constitution? and why would you apply a restriction in the power to dispose of money, which could not be applied to the power to dispose of property?

And the regulation of commerce is another unlimited and exclusive grant of power. And if it were not controlled in the same manner, some of the most important objects of political concern might be brought under the jurisdiction of the General Government. I do not elaborate these points. I merely touch them. It cannot be necessary to do more.

But the Senator from North Carolina, while he seems to concede the duty of exercising all powers with reference to the purposes of the Constitution, points out a difference between the obligation of those acts, where he chooses to apply this principle, and those which are general, and depend upon the discretion of Congress. The former are void, if contrary to the Constitution, while the latter are valid, however much the legislative discretion may be abused. And he instances the case of

war, which, even if declared by Congress for the most frivolous pretexts, becomes the legal condition of the country. This is so, sir, beyond all doubt. There are powers, which, from their very nature, may be abused; and that circumstance, therefore, furnishes no conclusive proof against their existence. It furnishes, however, strong motives to hedge them round, as much as may be, with proper safeguards. But I have already attempted to show, that the land-disposing power includes within its exercise the purposes of the application, and that where those purposes are upon the face of the act, incompatible with the Constitution, the proceeding is void. It becomes, not an abuse of discretion, but an assumption of authority. That the unlimited treaty-making power could not be so employed as to provide, by stipulations with a foreign nation, that all the expenses of the State governments should be defrayed by the United States, whether by grants of land or money, I suppose no one, however latitudinarian may be his notions on the subject of constructive powers, will venture to assert. And how is it, then, that the property-disposing power may be used for that purpose, merely because it is unlimited in terms, though the treaty-making power is equally so, and though the consequences of the violation, the destruction, indeed, of the Constitution, would be the same? And the act in each case would carry with it proof of the assumption, as it would make part of the proceedings. To attempt by treaty to provide for objects out of the sphere of the General Government, prohibited or contrary to its nature, is conceded to be a usurpation of authority, and wholly invalid. So says the Senator from North Carolina. And however he may limit his principle, there is no just limitation which will withdraw the land-disposing power from its operation.

Whether we shall have an army of five or of five hundred thousand men, or a navy of a single cock-boat or of huge fleets, covering every ocean, or a depleted or repleted Treasury, these are questions solely within the discretion of Congress, and not likely, in our country, to be abused. It will be seen by reference to the grants of power in the Constitution, that much the larger portion of them are of this character; that is, they are discretionary, as to the extent to which they may be exercised, though, of course, they are all to be exercised within the purposes of the Constitution. When it is obvious, upon the face of the proceedings, that the Constitution has been overstepped, and that an authority has been arrogated, not intended to be given, then it is not an abuse of discretion, which leaves the act in force, but an assumption of power, which renders it unconstitutional and void; and this is just the case, when the public property or the public money is applied to objects, not warranted by the fundamental compact.

Thus far this unlimited power of disposition has been derived from the Constitution itself; but it is also urged upon the ground of precedent, and the authoritative exposition, which acquiescence brings with it; or, in other words, if we are to be foreclosed by this consideration, we may be required to do wrong again, because we have already done it. This point was so ably considered by the Senator from Virginia, [Mr. HUNTER,] that I shall do little more than refer to it.

I have no disposition to deny the weight of practice in political affairs. The experience of those, who have gone before us, is an important element in the solution of the questions, which daily present themselves for examination. Precedents are entitled to respectful consideration; and, from the very tendency of human nature, they are sure to receive it. But, after all, we have one advantage over our predecessors. We have our own experience, and theirs too, to guide us in our course; and I think the former is quite as valuable as the latter. Of all the countries in the world, this is the one where legislative examples are least entitled to binding authority. The Governments of the Old World are bundles of precedents, made up of the uses and abuses of centuries. Here we have a perpetual standard in a written Constitution, by which all questions may at all times be tested. It is good to recur to first principles. It is good to apply our standard to all subjects, as they arise. Various constitutional constructions, enlarging the powers of the General Government, have been, from time to time abandoned, and the original purity of our institutions restored. A bank, a protective tariff, a wild system of internal improvements, the right to impose restrictions upon a State, which would deprive the people of the power to regulate their condition for themselves; all these, and others, are familiar illustrations of the rejection and correction of constitutional errors.

The Senator from North Carolina regrets, almost censures, indeed, the course of the President in not considering himself bound, in the performance of his duty, by previous decisions, instead of following his own convictions of constitutional duty. The President was right to make his own conscience his guide. Certainly, where the balance is nearly even, and the true interpretation very doubtful, the established course of action may well settle a question. But for myself, I consider this case far removed from any such principle, and too clear to admit any such adventitious influence. The Senator thinks the President should have paused, and doubted his conclusions in the face of the great names, which are invoked. I have no doubt he did pause. We have the best evidence, indeed, in the truly constitutional message he has sent us, that he fully examined the whole subject. His own conclusions it was his duty to adopt.

But, after all, I know no precedent at variance with the principles laid down by the President, except the two cases referred to by him, of the grants to Connecticut and Kentucky for asylums for the deaf and dumb; and these, as he well remarks, should serve "rather as a warning than as an inducement to tread in the same path." Certainly, they are neither sufficiently numerous, nor cogent enough in the reasons assigned for their passage, that the objects were CHARITABLE AND NATIONAL, to become authoritative cases, establishing an obligatory construction of the Constitution, in so grave a question. So far as I have been able, on a cursory inspection, to examine the other grants made by Congress, I think they come within the just constitutional principle, which regulates the administration of the public land.

The property of the United States is derived from foreign acquisition or from domestic cessions.

It is contended by the Senator from North Car-

olina, that the former may be granted to the States, because "it belongs to us, and there can be no objection to giving us a fair share of it."

Now, sir, the us in this declaration of rights refers to very different identities; the first being the United States, and the second the respective States. Between the two, there is no connection in relation to this subject, and the deduction is equally illogical and unconstitutional. And if the view were correct, it would apply to all the means of the Federal Government, to the proceeds of the taxes, and to the money in the Treasury, however derived, because, as all belongs to us, all may be given to us.

But it is contended, that the domestic cessions may be distributed, because they are held for the common benefit. Let us look at this. In the act of cession of Virginia, it is provided:

"That all the lands within the territory ceded to the United States, and not reserved for nor appropriated to any of the beforementioned purposes, or disposed of in bounties to the officers and soldiers of the American Army, shall be considered a common fund for the use and benefit of such of the United States, as have become, or shall become, members of the Confederation or Federal alliance of the said States, Virginia included, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for that purpose, and for no other purpose whatever."

Now, sir, even if this tenure and disposition of the public property were, by compact, applicable to it all—and they are not, for there is a vast portion of it, all, indeed, acquired by foreign, and much acquired by domestic, cessions made by some other States, and purchases for forts, arsenals, &c.—they would be far from leading to the consequences, which are here assumed for them. Indeed, all property belonging to the United States is held in one sense for the common benefit; but it is for the common benefit, connected with the purposes of the Constitution, and not to make one Government a recipient of funds to be paid over to another.

When Virginia executed her deed of cession, it was under the old Confederation, which gave no power to the Government formed by it to levy taxes upon the "Alliance," as it was called in the Virginia act of cession. Fiscal means for the Union could only be obtained by requisitions upon the several States, which were badly paid from the first, and eventually not paid at all, and this utter destitution of resources brought the Republic to the very verge of destruction, and, indeed, was one of the principal motives for the establishment of a Government, operating authoritatively upon individuals, and not advisorily upon States. The necessary charges were apportioned upon the various members of the Confederacy by the old Congress, and then each was called upon to pay its quota into the general Treasury. And such was the state of things, when the act of cession of Virginia was executed. Now, what is the meaning of the terms employed in it, that the land should become a fund for the use and common benefit of the members of the Confederation, according to their usual proportions in the general charge and expenditure, and should be faithfully applied to that purpose, and to no other? That this fund should go towards defraying the expenses of the Confederation, and should be fairly appropriated to that purpose. Whenever means were required for the general Treasury, the amount was divided among the several States, upon the basis of the value of property, and each was called upon for its share. And these are the *proportions in the general charge and expenditure*, described in the deed of cession, and for which the land is pledged. If the portion of Virginia, for example, in any requisition, amounted to $100,000, the proceeds of the cession, as far as received, went to diminish the sum necessary she should raise by taxes, and this was the *common benefit*, of which we now hear so much, as justifying an entire change of application. That this was the view, entertained at that day, is evident from the fact, that these cessions were applied to the common benefit of the Confederation, and not converted into a mere distributive fund. Unless, therefore, common benefit has two different meanings, in this clause, one applicable to the General Government, and the other to the State governments, the latter have no claim to any portion of this property.

"If," says the Senator from North Carolina, "they [the public lands] are held in trust for the common benefit of all, how, in the name of common sense, can it be possible it is wrong to give all a share?" Simply because in the name of the Constitution, we are prohibited from the conversion of this fund to unconstitutional purposes, designed as it is for the benefit of the Confederation as such. Had a provision, making the Government of the United States an agent for the acquisition of property, and for its distribution among the several States, formed part of the Constitution, I doubt if that instrument would have received a vote of ratification from a single member of the Union.

It is objected, that the proceeds of these lands, when paid into the Treasury, and when drawn out for general purposes, are not distributed equally for the common benefit. This objection, whatever its force, applies as well to the means supplied by taxes, as to those supplied by property, and it proceeds upon too narrow an assumption to command assent. It, in fact, reduces the common benefit to mere geographical considerations, connected with the public expenditures. More than $100,000,000 have been received into the Treasury from the sales of the public land, ($137,000, including the bounty lands, and considering them as money,) and have by so much diminished, in equal proportions, the amounts it might have been necessary to raise in the respective States. If, as the Senator says, four times as much has been expended by the General Government in Delaware as in North Carolina, it is because the interest or common benefit of the Confederated Government required it. Exposed and important positions must be defended, and the proper disbursements do not depend on any local equilibrium. There are some points in our country, which are peculiarly vulnerable, and which, if left unprotected, might be seized by an enemy, to our incalculable injury. The State, which sits still and says, the common benefit requires you should expend just as much in my defense and within my boundaries as in the defense of any sister State, and I will object to all appropriations if you do not act upon this principle, may procrastinate her hour of trouble, and have the advantage of being injured or devoured the last; but that will be her only gain.

Some States, from their position, are defended by others. Kentucky and Tennessee could not be approached by an enemy, till the circumjacent

States were prostrated. Nothing could be more unressonable than a demand of equal geogrsphical expenditures, in order to receive a due shsre of the common benefit. All just and constitutional expenditures are for tbe common benefit. Circumstances require they should be made at points, not having relation to geographical distinctions. Because the city of New York draws largely upon the public resources for its defenses, it would be a strange pretension that Frankfort, in Kentucky, must be equally fortified, or that there must be a naval dock-yard in Iowa, because there is one in Virginia. Such a demand, if acceded to, would hazard the benefit of all, by the pretense of seeking the benefit of each.

I consider the President's general views of the duties devolving on Congress, relative to the administration of the public property or lands entirely correct. These duties may be divided into two classes:

1. The sale and the payment into the Treasury of the proceeds, thence to be drawn out for the common benefit, that is for constitutional objects.

2. By necessary "rules and regulations" to manage and use the property, where it is held, for the purpose of use, as arsenals, &c.; and where it is not, the public domain for example, by similar "rules and regulations" to provide for preserving and protecting it till "disposed of," and also to improve it by grants or otherwise, with a view to a higher price or to speedier sales, doing its just share in the progress of the country, and all this just as a prudent proprietor would do. All grants of public lands, not coming within one of these categories, I consider unconstitutional. Of course there must be a reasonable latitude of discretion in the application of these principles, because they are very general in their practical operation, but there is a clear boundary of power, and that is when the object of the grant has no fair relation to the public domain.

The duty of profitably managing the domain and of rendering it more valuable, thus increasing the inducements to emigrants to purchase, justifies any disposition honestly effecting this purpose. It does so in the words of the President by "augmenting the value of the residue, and in this mode encourages the esrly occupation of it by the industrious and intelligent pioneer." It began during tbe administration of General Washington, when an act of Congress was passed granting three tracts of land in the Nórthwestern Territory to Isaac Zsne, one where Zanesville now is, another where Lancaster is, and a third opposite Chillicothe, in consideration of his marking and opening a road (a bridle path rather) from Wheeling to the Ohio river, opposite Limestone, now Maysville, in Kentucky. It is upon the ssme ground of increasing the value of the property, that grants for the purposes of education, of settlement, of defense, and for many other objects of a similar nsture have been made in the public domain, and may be constitutionslly defended, and in like manner the *great bill of the session*, of the age rather, the homestead bill, making provision for granting a tract of land to every man, who will occupy and improve it for five years, becomes as constitutionsl, as it is wise and just. A proposition earnestly advocated by Andrew Jackson and by Daniel Webster must have some claims to favor, and is hardly a fit subject for the sneers and denunciations it has provoked here and elsewhere. Its friends may pass them by, unharmed by vituperation, snd not fesr to do right, becsuse charged by those, who find the rule of conduct for others in their own breasts, with being mere demagogues, while seeking to do justice to all, whether rich or poor. I believe, if this homestead bill passes, as I trust it will, that it will form a marked era in the history of our country, accelerating her progress in all the elements of power and prosperity. It will add to our population, to our productive resources, to our strength, and, above all, to the contentment of our citizens, furnishing new and powerful motives to rally round a Government, in its hour of danger, which offers to the world the noble example of beneficence, instead of taxation; and wbich thus aids in fulfilling the great injunction to "replenish the earth and subdue it"—an injunction, which, if not facilitated by such a measure, would be delayed and disobeyed, it may be for centuries in much of our public domain, which would remain a waste or forest, instead of being covered by a happy and thriving population.

I have been gratified in finding, that the doctrines of the veto mcssage, as I understand them, bring the objects of this bill within the constitutional powers of Congress; and this belief has been fortified by the consideration, that in the examination of the grants heretofore msde, the President enumerates but two, those to Kentucky and Connecticut, which he considers clearly unconstitutional. Among those not disavowed are the grants made by the Florida settlement law, by which a tract of one hundred and sixty acres was secured to every man, who should occupy it for three years. And also by the Oregon settlement law, by which six hundred and forty acres, or less, according to circumstances, were promised after an occupation of five years. Like grants, though on a smaller scale, were made to the French inhabitants of Gallipolis, and also to the Ohio company for actual settlers, and in other cases, not necessary to be particularly referred to.

But, sir, there are other considerations, not indeed legally binding, but which appeal strongly to Congress in favor of its action upon these subjects. And these considerations arise out of the moral duty of the United States, as a great land owner, to do something towards the progress and improvement of a country, whose advance has added, is yet adding, so much to the value of the property of the General Government. As I shall recur to this branch of the subject again, I merely touch it here.

And there is, also, snother view, which adds to our equitable, if not to our legal obligations, and presents some singular topics for reflection. The new States, as well as the old ones, possess the eminent domain, which belongs to every sovereign community; that is, the right to control all the property within its jurisdiction for public purposes. This claim of one of the attributes of sovereignty, is perfectly defensible upon the general principles of our mixed political institutions. It is also supported by the highest judicial authority; for the Supreme Court has decided the existence of this right, after full consideration. Within the operation of this eminent domain is a great land owner, another Government, claiming all the vacant land, and converting the proceeds to his purposes. Able

men have not been wanting to contend, that this tenure is incompatible with State-rights and sovereignty, and ought to yield to them. It is certainly in derogation of them; but, looking to the constitutional compact, and to the clause in relation to the territory and other property of the United States, I do not at all concur in the opinion that the new States, within which the public land is found, can appropriate it to themselves. Still, it deprives them of a vast source of revenue, and has operated, though not so much now as formerly, to retard their prosperity, by the heavy drain of specie, which the purchase of the land occasioned. These circumstances appeal with much force to this powerful land owner, calling for the most liberal and equitable course in the administration of his property.

But again, sir, this appeal is fortified by another view of this subject; and that is, the right of taxation. I know of no principle of constitutional law nr reason, which would exempt the domain of the United States from its fair proportions of the public contributions, required in the States, where it is situated, and by which the general prosperity, which adds to its value, is enhanced and aecured. There is no judicial decision settling this question. In the case, indeed, to which I have referred, where the Supreme Court decided that the eminent domain was in the States respectively, there is an incidental allusion, which would seem to indicate, that the opinion of the judge delivering the decision was adverse to this right of State taxation; but the point was not before the Court, nor considered by it. And I learn from undoubted authority, that the question of taxing the property of the United States has never been authoritatively settled, and that in the case or cases where it has been presented, circumstances, perhaps differences of opinion in the Court, have prevented final action. So that the whole matter depends upon general principles.

Among what was declared to be the irrepealable articles of compact of the ordinance of 1787, was nne, which provided, that the public lands of the United States should be forever free from taxation in the new States and Territories. I have heretofore expressed my views in relation to the nature of this one-sided compact, and have contended, that it had no element of perpetual obligation; among other reasons, because it directly interfered with the constitutional power of the States; and, because there was but one party, the other not having come into existence till years afterwards, and then never gave its assent to these stipulations. I shall not go over this ground again, but shall content myself with adding authority to argument, by referring to the views of the Supreme Court. In December, 1850, Chief Justice Taney delivered the opinion of the Court upon the subject in the following words:

"But it has been settled by judicial decision in this Court, that the ordinance is not in force. Among other reasons, because it derogates from the rights of the States, and would place the new States in a position inferior to the old ones. All the provisions that still exist owe their validity to the Constitution of the United States, and not to the authority of the ordinance of the Confederation. As we have already said it ceased to be in force upon the adoption of the Constitution, and cannot now be the source of jurisdiction of any description to this Court."

I hope, sir, we shall have no more attempts, here or elsewhere, to galvanize into existence this dead carcass. This process of exemption being removed, how stands this matter? In rather a singular situation.

The necessity, or at any rate, the expediency of placing, not only the title of the United States to the public lands, but their exemption from taxation, beyond the reach of the State authorities, was apparent to the Congress of the Confederation, and led to the protecting clause I have referred to in the ordinance for the government of the Northwestern Territory. And there the matter rested, till Ohio, the eldest of these new political communities, applied for admission into the Union. This necessarily brought up the question of exemption; and provision was made in the act of admission for securing the interest of the United States. Certainly, in so grave a subject, involving such peculiar and delicate considerations, every dictate of prudence required, that a satisfactory arrangement should be made, and that such important interests should neither be left to the restrictions of the ordinance, nor to the uncertain chances of future collision. But instead of effecting the object by a compact with the State, an authoritative declaration by one party, the General Government, was inserted in the act, and the admission of the new State was made upon the condition, that its constitution should not be repugnant to the ordinance of Congress of July 13, 1787, which secured the title of the public lands, and their freedom from taxation. And upon this declaration, and upon nothing else, and that, too, without the slightest consideration, and without any action on the part of Ohio, rests the claim of the immunity of this vast property of the United States in that State. And the same proceedings took place in the cases of Indiana, of Illinois, and of Missouri; and their rights, whatever they may be, are the same as those of Ohio.

The mode of selling the public land brought up another question, which prudent forecast also required should be met and provided for. Till 1820, I think, the lands of the United States were sold upon a credit system. The price was two dollars per acre, and one fourth of this sum had to be paid at the time of the entry, and for the residue the purchaser had a credit of five years. If not then punctually paid, the land reverted to the United States. During this period it was of course subject to State taxation; but the lien which that taxation would impose upon it, and its operation after the reversion, might prove difficult and embarrassing questions, involving, as they necessarily would, peculiar considerations. Impressed with the importance of this subject, Congress, in the case of every admission of a new State before the change of system, made provision for its adjustment. With one exception, that of Mississippi, offers were made to all these States to induce them to assent to the exemption of the land held by the purchaser for the term of five years from the day of sale. Mississippi was more summarily dealt with. These tracts were in that State declared exempted by the authority of Congress in the act of admission—an arbitrary proceeding, without the pretext of justice or of constitutional power.

The promotion of education seems to have been a favorite object with the Congress of the Confederation; and they made provision, with enlightened care, for a fund to be devoted to that object. The

system began with the very commencement of the disposition of the public lands—as early, indeed, as May 20, 1785, when the first ordinance of the Congress of the Confederation on this subject was passed. It contained this provision: "There shall be reserved the lot number sixteen of every township, for the maintenance of the public schools within the said township." And this arrangement was renewed in the ordinance of July 23, 1787, under which the contract with the Ohio company for the conveyance of an extensive region, and the contract with John Cleves Symmes for the country between the Great and the Little Miami, were formed, and under which the old seven ranges in Ohio were surveyed, and partly sold. "The lot number sixteen in each township, or fractional part of a township, to be given perpetually for the purposes contained in the said ordinance;" that is, for the support of schools. And again, in the ordinance of June 20, 1788, respecting claims and donations, in what are now Indiana, Illinois, Michigan, and Wisconsin, it is declared, "That the lot number sixteen in each township, and fractional part of a township, to be given perpetually for the purposes in the said ordinance," just quoted. And from that day to this, section sixteen in each surveyed township has been considered appropriated to this purpose, generally by specific provisions in the acts of sale, though sometimes the reservation is made without particular designation. But everywhere, through the vast public domain, the settlers in each township have paid for the school section as truly as for their private tracts, because the former was one of the considerations held out to purchasers, and enhanced the value of their property, and thus accelerated the period of sales by the United States, and sometimes at increased prices.

And so conscious have Congress been of the existence of this right, and so careful to guard it, that I believe, in all cases where its consent has been given to any change in the administration of this fund, proposed by the State Legislatures, it has been made a preliminary condition, that the qualified voters of the proper surveyed townships should assent to the measure.

A synopsis of the various acts of admission of the new States presents some curious results. I have one before me, exhibiting the requisitions and the offers of the General Government; but it is too long for our discussion, and would encumber a subject already too comprehensive. I shall content myself with some general references to it. The case of Ohio established the general practice.

In order to procure the assent of Ohio to the cession of the right of taxing all tracts for five years from the day of sale, and to embody her assent in the form of an irrepealable compact, the following offers were made:

1. Section sixteen for school purposes in each township.

2. Certain salt springs, or salines, (now of little value in any of the States.)

3. One twentieth part, or five per cent. of the net proceeds, of the sales of the public lands to be appropriated under the direction of Congress to the construction of roads; three per cent. of it in the State, and two per cent. upon roads out of it, but leading to it. The arrangements, as I have already said, with Indiana, Illinois, and Missouri, are so nearly the same, as to render particular reference to them unnecessary. Alabama was also declared incapable of interfering with the property of the United States, or of taxing it, and this as a condition of admission; but she was also required to give her assent to this arrangement; and the offers made to her applied as well to this subject as to the exemption of the five years' taxation. Some additions, embracing university lands, and lands for seats of government, were afterwards made to other States, besides the offers made to Ohio, but they are of comparatively little importance. Missouri was the last State, with which any arrangement was made for the freedom of the public lands from taxation after their sale. The change of system to prompt payments superceded the necessity of any future provision upon that subject.

Henceforth the offers were confined to the recognition of the title of the United States, and to the exemption of their property from taxation. And, as I have said, the new States were placed in a condition where they were hardly free agents. In reviewing the history of these additions to our Confederacy, I find but two cases, where the parties met upon a footing of equality, as men meet in private life, fairly exercising the same power to reject or accept propositions. These cases are Michigan and Arkansas; and they occurred, I suppose, in consequence of the peculiar circumstances under which these States entered the Union. But whatever the cause, the fact is certain, that they have no ground of complaint; for they were admitted unconditionally, and were perfectly free to assent to the propositions offered by Congress, or to fall back upon their rights as sovereign States. They chose to do the former; and though I think my own State made an improvident bargain, selling its birthright for a mess of porridge, yet she is bound by it, and will faithfully adhere to it.

And what is the probable value of this right to tax the lands of the United States, as those of individuals are taxed? Of course it is a question, which admits only of an approximative answer, of a vague one indeed, but still sufficiently accurate to show the sacrifices, which have been made by the new States. I have applied to the Commissioner of the General Land Office, an officer of the highest worth and fidelity, and, I may add, ever ready to oblige, for his opinion upon this point, and the tabular statement before me contains the result of his inquiry. He computes, that the lands of the United States, taxed upon the usual principles, by the States where they are situated, would have yielded a revenue of $59,984,693 from the organization of the respective State governments to, and including, 1853. How much they would yield in the future, till they are all sold, is a question, which presents no basis for calculation. It would be idle to speculate upon it. It is enough to know, that it would amount to an immense sum of money.

And what considerations have been made to the new States for the abandonment of this great source of revenue? And also for the sum of $4,797,397, the value of the taxes relinquished upon the land sold during the credit system? The most prominent, and by far the most valuable offers held out to the new States for their *forced concurrence*, was the grant of section sixteen for school purposes in each township. This section had already been solemnly pledged for that object, and had been paid for by the settlers. Every

man, who bought a tract of land in the township bought with it his proportionate share of the school land; and it could no more be taken from him than if he had held a patent for it. After receiving pay for it once from the settlers, the United States demand and receive pay for it a second time from the reapective States, as one of the considerations for the concessions made by them. And now we are told by the honorable Senators, who have spoken upon this subject, that after the receipt of this duplicate value, these school sections are magnificent *gifts* made by the United States, and furnishing irrefragable proofs of their liberality. If to conduct so is to be liberal, it would be hard to say what would be niggardly.

The university lands in Ohio were bought and paid for by the Ohio company, and by John Cleves Symmes, and in the other States they formed part of the consideration offered to them, as did a few small tracts to some of them for their seats of government. Add to these about fifty-seven thousand acres of saline lands, and we have the full amount of the considerations tendered to the respective States, with the exception of five per centum upon the sales, amounting, I believe, to about $5,200,000. This latter fund was applicable to roads within, and to, the respective States, partly to be administered by Congress, and going as much to increase the value of the public land as that of individuals; and its benefit, therefore, was common to them and to the General Government. It would be equally unreasonable and unjust to view this fund as an exclusive one for the advantage of the States.

Subsequently, and without reference to the States, but acting as a land-owner with a view to increase the value of the public property, Congress has made various grants for railroad and canal purposes in some of the States—not in all—which have had the effect anticipated; and the wisdom of the action has been proved by its favorable effect upon the national domain, wherever it has been extended. It has not been done as a matter of *beneficence*, but as a matter of *calculation*.

Mr. President, we have heard the extravagant estimate made of the value of these grants by the Senator from North Carolina. It is not a picture drawn from nature, but the features have been supplied by the imagination. Why, sir, he makes the new States and Territories the recipients of the public bounty to the enormous sum of $139,000,000; and how is this formidable amount, proving the beneficence of the great land owner, obtained? By a most extraordinary process indeed. The heaviest item is the swamp lands, tracts of country pronounced in the act of Congress ceding them "as unfit for cultivation," which had been in market, and had remained unsold for many years, and which the United States were unwilling to reclaim—an improvement required in many places by the public health. And the States accepting these grants were required, as a condition, to reclaim them, and thus prevent them from being nuisances. And every acre of these tracts of statutory *malediction* is set down as worth $1 25, and their value is thus swelled to the enormous amount of more than $35,000,000. I must express my amazement, that any such estimate should be seriously presented to the Senate and the country, producing impressions so radically erroneous, and doing such injustice to the new States of the Union. Certainly the wish must have been father to the thought; and a disposition to find in their relations with the General Government the advantages upon their side, must have operated to obscure the judgment.

The balance-sheet is rendered still more formidable by the sum of $48,000,000, to obtain which not only are all the school-land grants to the new States, already twice paid for, put in requisition a third time, but one thirty-sixth part of the immenee regions in California, Utah, Oregon, Washington, New Mexico, and Minnesota, are added at the same statute-price of $1 25 per acre; though in all these districts, but Minnesota, not a single foot of public land has been brought into market, and almost the whole of it is unsurveyed, and without any provision for its sale; and, by-and by, what is now called a most stupendous act of beneficence will be paid for by the settlers, and again after that by the States, according to the system of politico-commercial intercourse established between the United States and the communities formed in their public domain.

I commend to the attention of the Senate the remarks recently made in the House of Representatives by Mr. Disney, of Ohio. He has examined this whole subject of the public lands with great clearness and ability, and no portion of it more happily or satisfactorily, than the branch which relates to the value of the grants made by the United States.

"The greater part of these Territories," said that gentleman, "are utterly barren and unproductive, useless to man and for human purposes. God, in his wrath, has stamped them with his enduring prohibition. No matter, nothwithstanding this, the gentleman cyphers out the sixteenth part of the area, and charges it as a naked gift and grant to the new States and Territories, and then aits down to figure out how much it will come to at $1 25 per acre—lands in the wilderness, more than half of them utterly valueless, hardly any of them surveyed, and to be sold to the purchasers of the respective townships, but all charged as gifts to the new States and Territories."

The price of the public land upon the statute-book is $1 25 per acre; but he who supposes this to be the just measure of its value takes a very partial and superficial view of the matter. No man or men of capital would purchase any large portion of the public domain, taking the good with the bad, at anything like that price—not, indeed, the half of it—and much of it would hardly be accepted as a gift. The Senator from North Carolina considers the price a low one. I consider it an enormous one, as the standard of value for the whole public domain. It is computed, that these western lands have cost the United States about sixteen and a half cents an acre; and the moment the purchase of a district is effected, then, by some kind of miraculous process, as potent as the operations of Aladdin's lamp, its value is decupled, I suppose, because it passes from the aboriginal proprietor to the Government. Some of the public land has been in market more than fifty years, without finding a purchaser; and a great deal of it has been in the same situation, though not for that length of time, yet for many years. Land originally held at two dollars per acre, and thus

left unsold, ought now to be worth six and eight dollars, and more, allowing the capital but simple interest at six per cent.; and all the land now held by the Government, if unsold for fifty years, and a great deal of it will remain so for a longer term, is now worth but little more than twenty-five cents, even should the present selling price be retained, which is not at all probable. Time is one of the elements of value; and any estimate of property is entirely fallacious, which assumes a price it can only bring, if ever, after a long course of years. When a district is opened for sale, the choice tracts are first taken, and then others in succession, as the progress of settlement and improvement bring their value to the selling price. That is not regulated by the statute-book, but by the demand. It is easy to see, therefore, that the estimates put upon the value of the lands granted to the new States is an exaggeration, which cannot stand the test of the slightest examination.

The Senator from North Carolina complains of the disposition made of the public land in Tennessee to the injury, he thinks, of the State he represents. A few words upon this subject. A number of the original States possessed claims to unappropriated western territory. Without investigating their justice, it is enough to say that a fearful controversy appeared to be, at one time, impending in relation to this matter. There were two sides to this dispute. It was contended, that this unappropriated territory, without the *acknowledged* real bounds of the Colonies, afterwards States claiming it, had belonged to the English Sovereign, and that it had been acquired by the common exertions of all the States, and ought to inure to the benefit of all. This was finally acquiesced in, and cessions of the Territory to the United States were made by the respective States, with reservations larger or smaller, and upon conditions more or less liberal. Among the ceding States was North Carolina, who relinquished her claim upon what is now the State of Tennessee. But before doing so, she had disposed of about seven eighths of the land. I speak from recollection, but I think I am not far wrong. And what has the United States gained by the arrangement, looking at it as a mere pecuniary one? In February, 1841, the State of Tennessee was constituted the agent of the United States for the purpose of selling the public lands in that State, at a price not less than twelve and a half cents per acre—the lands being represented of very little value, and upon condition that all the legal and *bona fide* claims of North Carolina should be first satisfied. Under this law, $4,851 were paid into the Federal Treasury; and this is all the pecuniary advantage the General Government ever received from the cession of North Carolina. How much this fell short of the expenditures for the support of the territorial government I do not know. Certainly several thousand dollars. Afterwards all these lands, and the unpaid proceeds, were relinquished to the State of Tennessee. And thus closed the transaction. Now, I think, sir, the Senator has no right to complain of this. I think Tennessee, and not North Carolina, was entitled to this grant. And I think still further, that there are strong circumstances in favor of granting the public lands to the States within which they lie, after they have long been in market, and when the portion unsold is of but little comparative value. A very moderate consideration would, in my opinion, justify such a measure.

The true state of things begins to be apparent to all. This system of administering a vast domain, much of which is within the jurisdiction of sovereign members of the Confederacy, cannot much longer continue with safety or advantage to the country. Difficult and delicate questions are daily growing up, which must either be solved in a spirit of mutual forbearance, or be left to find their own solution. The labor of legislation upon this subject is one of the most arduous duties of Congress; and many, most, indeed, of the questions, are so local in their character, that they require a knowledge of circumstances, far more readily acquired in remote districts, than here. I have read with much interest a speech lately delivered in the House of Representatives by Mr. PERKINS, of Louisiana, upon this subject of the public lands; and I was favorably struck with the justice and originality of many of the views presented by him. My first wish with relation to the public lands is, that homestead grants should be made to actual settlers, and after that, or in subordination to it rather, I think, with Mr. PERKINS, that the administration of the domain had better be committed to the respective States, upon some such general principles as he advocates, without, however, pronouncing upon the specific details.

It seems to me that the Senator from Mississippi will find in the considerations I have presented a full answer to the objections so ably, but, I think, inconclusively urged, by him. He says:

"All such grants we are told have been for value received; value received from whom? Not from the grantees, to them the grant was a naked, undisguised gift."

He then contends that the General Government received no consideration for the land thus appropriated to these objects, and says:

"We had either the power to make these gifts or we had not. If it exists in the Constitution, we had it independent of any consequences or results that may follow its exercise. The fact that one section of land is doubled in value by giving away another section, may be a very good argument to justify the use of an actual existing power. But I submit that it does not and cannot by possibility supply a power that does not already exist. If I have no power to give one section, it is useless to tell me that the gift will enhance the value of the next section. My answer is simply, I have no power to give at all."

Mr. President, if the views I have submitted to the Senate are entitled to weight, they fully answer these objections. We have no power to give away the public land. We have power only to dispose of it, which includes a power within the purposes of the Constitution; and we dispose of portions of the property to increase the value of the residue, as well as to quiet the title and to compromise with the States. The error of the Senator, according to my view, is in the assumption of an uncontrolled right in Congress to dispose of the public property at its pleasure, without regard to consideration or to consequences.

The Senator asks who pays for these grants. I have endeavored to show that in the case of railroad grants, and others of a similar nature, they are paid for in the increased price or celerity of sale of other lands; and the payment is thus made by the industry of the settlers of the surrounding country. With respect to the school lands, I need not repeat what I have already said; but there are some peculiar circumstances connected, as well

with this fund in the Senator's own State, Mississippi, as with her admission into the Union, which may repay a cursory examination, present ing still another episode in the progress of our Confederacy.

The act for the admission of that State contained no offers, but it contained a peremptory requisition, a previous condition to admission, that the convention should provide by an irrevocable ordinance, that the title of the United States to the public lands in the State should never be interfered with, and that no tax should be imposed upon them, while held by the General Government, nor upon any tract that might be sold, till five years after the day of sale. Without an express assent to these demands, there would have been an indefinite continuance of the territorial government. The attributes of sovereignty were not asked for, but taken without the slightest consideration; and whatever difference of opinion there may be as to the question of taxation, there should be none as to the justice of having this question decided either judicially or by both of the parties, instead of one of them, nor as to the unconstitutional assumption to prescribe as a consideration and condition of admission, that the State should surrender its right to tax the land of individuals, while held by them. It was an arbitrary proceeding, for which no justification can be found.

There is in the same act a restricted grant of the five per cent. fund, but it was not offered as a consideration. I learn from the Land Office that the State has received $726,219,000 on account of this grant, which went to improve the property of the United States, precisely in proportion to its extent and value. And I learn also that the five years' taxes upon the land sold amount to $687,000. And when it is recollected that, at the time the United States made this bargain for themselves, the credit system was a part of our land administration, and that no change was anticipated, it will be perceived that, in order to ascertain the value of the bargain, we must look not only to the actual receipts, but to what would be received had no alteration occurred—that is, to at least double the sum paid to the State.

Where, then, is the consideration received by Mississippi? Her school lands, paid for, as I have shown, her university lands, &c., were left for subsequent voluntary arrangement, perhaps under the conviction that the right of the State to them was perfect, as making part of the consideration paid by her citizens.

Mr. BROWN. Mr. President, if the honorable Senator will allow me I wish to ask him a question. A grant to a railroad is justified on the ground that it increases to double the former value, the alternate sections reserved—that is, Congress may give one section of land to a railroad company on the hypothesis that the adjoining section is thereby made of double value. Now, suppose that turns out not to be true; suppose that, as sometimes happens, the railroad company fails to build the road after it has expended all its money, or, having built it, it proves to be unprofitable and is abandoned, what becomes of the argument in favor of the increased value of the land?

Mr. CASS. I think the answer is obvious. Congress have the right to take fair measures for increasing the value of the public property. The propriety of the act is not affected by the result. There may be improvident, careless legislation, and the grants may not be properly secured, as they should be, and made to depend on the completion of portions of the road. But all this does not touch the question of power, which depends upon an honest and reasonable expectation of the improvement of the property.

Mr. BROWN. But suppose the road is made and it turns out to be a failure, as sometimes is the case, and is abandoned—what then?

Mr. CASS. Why, sir, like every other landowner, like every other man, indeed, in the uncertain concerns of life, Congress may be disappointed in its expectations, though I know of no case like that put by the Senator, where there has been a loss by these enterprises. But suppose the failure should happen, it would not affect in the slightest degree the powers previously exercised. This power is to take proper and honest measures for improvement, but its just exercise is unaffected by the result.

Mr. CLAYTON. I ask the Senator this, would a total failure in value make the grant unconstitutional?

Mr. CASS. Certainly not, if it were constitutionally made—that is, in the honest and reasonable expectation that it would improve the value of the public property.

As a manager for the land-owner, the people of the United States, Congress may "regulate" the land, use it, improve it like any other owner, and the validity of the act does not depend on the result, but whether at the time it fairly came within the principle.

Mr. BROWN. Before the Senator passes from this point, I should like to hear him justify the grant of five hundred thousand acres of land to the new States, for works of internal improvement. We all recollect that in 1841, five hundred thousand acres of land were granted to all the new States, my own included, for works of internal improvement. If I understand my friend from Michigan, he takes the ground that this Government has no right to make internal improvements within the limits of a State; has no more right to do that than to establish a lunatic asylum in a State. Yet Congress did appropriate five hundred thousand acres of land to the new States, and they have accepted the grant, and appropriated the lands for the purpose. I have thought all the time that the act was constitutional, and I have justified it on the same ground on which I undertook to justify this act. If I am mistaken in this case, I am in that, and I should like to have the benefit of the Senator's learning on that point.

Mr. CASS. I will answer the Senator; but I am getting rather fatigued, and must ask him to spare me any further questions at present. I do not precisely comprehend whether he refers to the grant itself of five hundred thousand acres of land to the new States, or to the application of it to specific purposes; that is, to internal improvements.

Mr. BROWN. I include both. My question was, whether the Government had a right to make the grant in the first instance; and if it had the right, whether it had the power to designate the purpose to which it should be applied; precisely as this bill assumes the right to grant land to the States, and then to point out the objects to which it shall be applied.

Mr. CASS. The President in his message has, in my opinion, stated with equal justice and clearness, the inevitable consequences, which would result from these unlimited and gratuitous grants in the several States, and from the changes, which such a system of interference would necessarily occasion in our institutions, by extending the power and influence of the General Government into all the departments of social and of political concern. While the Senator from North Carolina neither sees a defect of constitutional power, nor foresees any danger in the application of the principle, I think he misunderstands the views of the President, and seems to suppose, that the objections urged by him, apply equally to all the States under all circumstances, and that therefore, if grants of land cannot be made to the old States, they cannot be made to the new ones, as the latter are equally sovereign with the former, and beyond the control or interference of Congress.

Sir, the objections of the President do not touch any question between new States and old States. They extend equally to all. The President denies the power of Congress to make gratuitous grants of the public lands for any purpose whatever, or to any State whatever.

But, as I have shown, in the adjustment of the many grave questions, which arise in the administration of the public land, Congress has endeavored to provide for them, sometimes by its own authority, and sometimes by the consent and co-operation of the respective States.

No one can call in question the right of the General Government to protect its own interest, whether involving the title of its property, or the claim to tax it, by grants of lands or by its proceeds for those purposes. Certainly it is better in a political system like ours, that questions of this nature should be amicably and satisfactorily adjusted, than that they should be pushed to their extreme issues. And if the title of the property of the United States were disputed in any of the States, it would be competent for Congress to settle the point by mutual arrangement. And so with respect to the right of taxation. Whatever opinion may be entertained of the validity of such a claim, the policy of arranging it without contest cannot be doubted.

Mr. BROWN. The State of Mississippi has abandoned that right.

Mr. CASS. I am speaking of the general principle. The Senator from North Carolina seemed to suppose, that we sought to confine this to the new States, and that an unjust and unconstitutional difference was therefore created between them and the old States. The simple question in all these cases is, where is the public property, and by what means is it to be fairly protected and improved?

And wherever the property of the United States is situated, it is clearly competent for Congress to adjust any claim of any kind upon it, rather than resort to a legal contest, if that body should think such an adjustment better for the public interest, whether the property be an arsenal in Massachusetts, a dock-yard in New York, or a land district or portions of it, in one of the western States. And it cannot be successfully contended, that, because grants of land may be constitutionally made for these purposes, with the assent of the States, that the same principle, which justifies this course, would justify the interference of the Federal Legislature, in all the concerns of the States, by granting subsidies in the form of acres; thus, in fact, rendering the State governments tributary to the General Government. The one is the necessary power to preserve, protect, use, and improve the property; the other is an unconstitutional assumption, as dangerous as it would be indefensible. It is obvious, in the view presented by the President, and that view is correct, that there is no power to control or influence State authority any where, and that all the States, are, in this respect, upon a footing of perfect equality.

But where the public domain exists, the great land owner may make arrangements for the security of his property with the respective States, and may also improve it by such grants as add to its value. In the former case, the question is not whether the grant is to be for the purpose of maintaining a university, or of constructing a road, or of making a canal, but what form of application will be most acceptable to the State, as a consideration for the concessions to be made by it. And in the latter, whether the purpose sought to be obtained, honestly fulfills the required condition, by improving the property, and thus facilitating its sale and settlement.

The Senator from Mississippi will therefore perceive, that my objection to this bill is not, that it proposes to establish lunatic asylums, nor that it proposes to do so in Massachusetts or Virginia; but that it undertakes to grant the public land for purposes not warranted by the Constitution. Not coming within the principles either of protecting or improving the property, or of fulfilling some of the just duties, arising out of the power of management, which can alone justify the disposition of it.

In fine, I consider the application of five hundred thousand acres of the public land, within any of the new States, for the purpose of improvement, as a wise and constitutional measure. The effect of such improvements is not confined to their immediate neighborhood, but is felt through the whole region. All experience shows this, and the application to roads and canals produces its effects upon the public property, and adds to its value, by adding to the motives for purchase and settlement. And besides these obvious considerations, others, to which I have alluded, arising out of the relations of the General and State Governments, justify a system of liberality on the part of the great land owner, in the execution of his power over the public lands, far beyond any Congress has seen fit to adopt.

And as to special application, I see no difficulty at all. To what purpose, the grant shall be applied is simply a question, as to its effect upon the public interest. Whether to roads, like the five per cent. fund, or to canals, or to general purposes of improvement, leaving to the proper Legislatures to administer it. I take it for granted, that if the United States, sought to improve their property at Harper's Ferry or at Springfield, they have a clear right to open a street through it, and to convey the title to the proper State authority for that special purpose, and for no other. It is a right inseparable from ownership.

The Senator from North Carolina, while alluding to the principle of confining grants to certain purposes, says, "we are not to be gulled in that way in my country." The honorable Senator is one

of the last persons, whom any man, knowing him, would undertake to gull. But he must allow me to say, that those of us, who have passed our lives in a new country, who have been identified with its rapid progress and wonderful advancement, are not to be gulled with exaggerated statements of immense donations having been made by the General Government. In the long chapter of human enterprise, there is no such triumph to be found. The man yet lives, who was living when the first tree fell before the woodman's ax in our vast domain, and the man is now living, who will live to see it contain one hundred millions of people. The story of this progress resembles a tale of eastern imagination, rather than the sober realities of actual life.

And what contribution has the great land-owner made to this mighty work? One utterly unworthy of his condition. He has proved himself a hard task-master. He has marched in the rear of the great column of civilization, instead of the van, taking advantage of its labors, and doing but little to aid them. The expenses, the sacrifices, and the exertions required to produce this result have been met by the people. They have built the roads, the bridges, the public buildings, and the other constructions, necessary for general purposes; they have drained the marshes, and made the wilderness to blossom like the garden, and they have encountered all but a small portion of the cost of maintaining governments and all the machinery of social and political organization. And a rigid account in the true creditor and debtor style, would exhibit a balance sheet, bringing this great land-owner in debt to the amount of millions upon millions for the improvement of his property, and without which, immense portions of it would have been comparatively worthless.

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